

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Alan Duane Rose,

Petitioner,

vs.

Warden Larry Cartledge,

Respondent.

Civil Action No.: 5:17-153-BHH

Opinion and Order

This matter is before the Court upon the Magistrate Judge's Report and Recommendation ("Report") (ECF No. 10), which recommends that the § 2254 petition be dismissed *without prejudice*. For the reasons set forth below, the Court agrees with the Report and dismisses the petition *without prejudice*.

BACKGROUND

Petitioner, Alan Duane Rose, a state prisoner confined at Broad River Correctional Institution, who is proceeding *pro se*, brought this action pursuant to 28 U.S.C. § 2254 requesting remand back to South Carolina Court of Appeals for direct appeal. (ECF No. 1.)

Pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(d) (D.S.C.), the case was assigned to Magistrate Judge Kaymani D. West. On February 28, 2017, the Magistrate Judge issued a Report recommending that the § 2254 petition be dismissed without prejudice. Petitioner has filed no objections, but filed a motion to dismiss (ECF No. 14) on March 20, 2017, asking this Court to dismiss this case, but "continue with the writ of habeas corpus on case number: 5:16-cv-03394-BHH-KDW."

STANDARD OF REVIEW

The Magistrate Judge makes only a recommendation to the district court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the district court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The Court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter with instructions. 28 U.S.C. § 636(b)(1). However, the Court need not conduct a *de novo* review when a party makes only “general and conclusory objections that do not direct the court to a specific error in the magistrate’s proposed findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982) (“[D]e novo review [is] unnecessary in . . . situations when a party makes general and conclusory objections that do not direct the court to a specific error in the magistrate’s proposed findings and recommendation.”). Furthermore, in the absence of a timely filed, specific objection, the Magistrate Judge’s conclusions are reviewed only for clear error. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

After a careful review of the record, the applicable law, and the Report of the Magistrate Judge, the Court finds no clear error. Accordingly, the Court adopts and incorporates the Report and Recommendation (ECF No. 10) by reference into this order, and grants Petitioner’s Motion to Dismiss (ECF No. 14). It is therefore ORDERED that this action is DISMISSED *without prejudice*.

IT IS SO ORDERED.

/s/ Bruce Howe Hendricks
United States District Judge

March 24, 2017
Greenville, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified that any right to appeal this Order is governed by Rules 3 and 4 of the Federal Rules of Appellate Procedure.